

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CONFEDERATED TRIBES AND BANDS OF
THE YAKAMA NATION; CATHERINE
SANCHEY WOLFSBERGER,

Plaintiffs,

-vs-

UNITED STATES OF AMERICA; P. LYNN
SCARLETT, Acting Secretary of the
Interior; MICHAEL D. OLSEN, Acting
Principal Deputy Assistant
Secretary, Indian Affairs; WILLIAM
PATRICK RAGSDALE, Director, Bureau
of Indian Affairs; STANLEY SPEAKS,
Northwest Regional Director,
Bureau of Indian Affairs; PIERCE
HARRISON, Administrator, Wapato
Irrigation Project; U.S.
DEPARTMENT OF THE INTERIOR; BUREAU
OF INDIAN AFFAIRS; WAPATO
IRRIGATION PROJECT,

Defendants.

NO. CV-06-3032-LRS

ORDER DENYING MOTION FOR
RECONSIDERATION

BEFORE THE COURT is the Plaintiffs' Motion for Reconsideration (Ct. Rec. 25), filed December 29, 2006 and noted for hearing without oral argument on January 29, 2007. Plaintiffs ask the court to reconsider its order granting defendants' motion to dismiss or stay the action.

Motions for reconsideration serve a limited function. Under the Federal Rules of Civil Procedure, motions for reconsideration may be made

1 pursuant to Rule 59(e). The major grounds for granting a motion to
2 reconsider a judgment are: (1) intervening change of controlling law; (2)
3 availability of new evidence; and (3) the need to correct clear error or
4 prevent manifest injustice. *School District No. 1J, Multnomah County*
5 *Oregon v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir.1993). A motion for
6 reconsideration is not appropriately brought to present arguments already
7 considered by the Court. *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th
8 Cir.1985). Plaintiff does not argue that there has been a change of
9 controlling law, or that new evidence is available, but expressly argues
10 that the Court committed error of law or fact and reconsideration is
11 necessary to prevent a manifest injustice. Ct. Rec. 46 at page 2.

12 Plaintiffs argue that the decision of the Court should be
13 "reconsidered and set aside" or in the alternative, "the Court should
14 stay this action pending the outcome of the administrative appeals before
15 the BIA Regional Director." Ct. Rec. 26 at 5-6. Plaintiffs argue that
16 this Court should "recognize that the RD's jurisdictional ruling on March
17 12, 2001 is final for purposes of APA judicial review." Ct. Rec. 26 at
18 3.

19 The facts indicate on July 12, 2006 the IBIA vacated the Regional
20 Director's March 12, 2001 Decision and remanded the matter to him for
21 further consideration and issuance of a new decision. Therefore, any
22 findings in the vacated 2001 decision are a nullity. Where the RD has yet
23 to issue a new decision there can be no finality as required under the
24 APA. Therefore, Plaintiffs argument that a part of the ruling in the
25 2001 decision is final is unconvincing.

1 The undersigned judicial officer concludes that "clear error" did
2 not occur in granting dismissal without prejudice to defendants, there
3 is no "manifest injustice" to the plaintiffs from that ruling, and new
4 evidence has not been presented which would change the Court's earlier
5 order. According, there is no basis for reconsideration of the Court's
6 December 19, 2006 Order of Dismissal.

7 Accordingly,

8 **IT IS ORDERED** that:

9 1. Plaintiff's Motion for Reconsideration, **Ct. Rec. 25**, filed
10 December 29, 2006 is **DENIED**.

11 2. The District Court Executive is directed to:

12 (a) File this Order; and

13 (b) Provide a copy to counsel of record.

14 **DATED** this 23rd day of February, 2007.

15 ***s/Lonny R. Suko***

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17 LONNY R. SUKO
18 UNITED STATES DISTRICT JUDGE
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